IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 35976 of 2004(G)

PETITIONER:

D.SREEDHARAN,
PROGRAMME CO-ORDINATOR, SCHOOL OF BEHAVIOURAL SCIENCE, MAHATMA GANDHI UNIVERSITY, KOTTAYAM.

BY ADV. SRI.BABU VARGHESE

RESPONDENTS:

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1. THE VICE CHANCELLOR,
MAHATMA GANDHI UNIVERSITY, PRIYADARSHINI HILLS P.O
KOTTAYAM.

2. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
PRIYADARSHINI HILLS P.O., KOTTAYAM.

BY ADV. SRI.V.A.MUHAMMED, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 7/03/2007, ALONG WITH WPC NO. 1973 OF 2005 THE COURT ON 14/3/2007 DELIVERED THE FOLLOWING:

APPENDIX IN WPC 35976/2004

EXT.P1-TRUE COPY OF ORDER DATED 16.8.99 OF THE UNIVERSITY

EXT.P2-TRUE COPY OF JUDGMENT IN WA 1275/2000 DATED 5.12.2001

EXT.P3-TRUE COPY OF JUDGMENT IN WPC 29550/2003 DATED 19.9.2003

EXT.P3(A)-TRUE COPY OF REPRESENTATION DATED 30.5.2003 SUBMITTED BY PETITIONER BEFORE R1

EXT.P4-TRUE COPY OF THE MEMO DATED 17.12.2003 ISSUED BY THE UNIVERSITY

EXT.P5-TRUE COPY OF JUDGMENT IN WPC 2994/2004 DATED 27.1.2004

EXT.P6-TRUE COPY OF ORDER DATED 22.3.2004 ISSUED BY R2

EXT.P7-TRUE COPY OF ORDER DATED 14.5.2004 ISSUED BY R2

EXT.P8-TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE VICE CHANCELLOR, M.G. UNIVERSITY, KOTTAYAM DATED 16.6.2004

EXT.P9-TRUE COPY OF JUDGMENT IN WP 25440/2004 DATED 25.8.2004

EXT.P10-TRUE COPY OF PROCEEDINGS OF THE HEARING CONDUCTED IN THE VICE CHANCELLOR'S CHAMBER ON 12.11.2004

EXT.P11-TRUE COPY OF THE ARGUMENT NOTE

EXT.P12-TRUE COPY OF ORDER DATED 10.8.1993 OF M.G. UNIVERSITY

EXT.P13-TRUE COPY OF NOTICE TO SYNDICATE PREPARED BY REGISTRAR.

EXT.P14-TRUE COPY OF THE PROPOSAL SENT BY THE DIRECTOR OF THE SCHOOL OF BEHAVIOURAL SCIENCES DATED 18.1.1990

EXT.P15-TRUE COPY OF THE AGENDA NOTE TO THE SYNDICATE

EXT.P15(A)-TRUE COPY OF THE RELEVANT PORTION OF MINUTES OF THE STANDING COMMITTEE OF THE SYNDICATE FOR FINANCE HELD ON 22.2.99

EXT.P15(B)-TRUE COPY OF UNIVERSITY ORDER DATED 15.4.2000

// TRUE COPY //

T.R. Ramachandran Nair, J.

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W.P.(C).NO.35976/2004 & 1973/2005

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Dated this the 14th day of March, 2007

JUDGMENT

The petitioner in these two writ petitions is the same. Writ Petition No.35976/2004 concerns the claim of the petitioner for granting him arrears of salary in the post of Programme Co-ordinator, School of Behavioural Sciences, after quashing Ext.P7. He seeks a further declaration that he is entitled to the scale of pay of the teaching faculty under the U.G.C. Scheme and for a direction to the respondents to disburse him the arrears and other service benefits accordingly. In writ Petition No.1973/2005 the petitioner challenges Ext.P3 by which the Syndicate of the University resolved to recommend cancellation of reinstatement of the petitioner.

2. The facts relevant for the disposal of the cases are the following: The petitioner was appointed as Programme Co-ordinator on 16.1.1991. As per Ext.P1, he was given independent charge of the Special School, Clinic and Community Extension Service programmes being run under the School of Behavioural Sciences. According to the petitioner, the post is one sanctioned by the University Grants Commission and the University

conducted an internal selection of academically qualified and eligible candidates, before making the appointment.

3. The petitioner was compulsorily retired from service on 31.5.2000 on completion of 55 years of age, as the University at that time was of the incorrect view that he is holding a non-teaching post. He challenged the same in O.P.No.9552/2000 which was dismissed. He filed Writ Appeal No.1275/2000 which was disposed of by Ext.P2 judgment dated 5.12.2001. The Division Bench directed the University to take a decision in the matter based on the materials produced by the petitioner. Again, when further delay occurred in the matter, he filed Writ Petition No.29550/2003 which was disposed of by Ext.P3 judgment recording the undertaking given by the Standing Counsel for the University that Ext.P5 representation will be looked into appropriately after hearing the petitioner and orders would be passed within a time frame as indicated in the above judgment. Subsequently, by Ext.P4, a non-speaking order, his representation was rejected, which was challenged by him in Writ Petition No.2994/2004. By Ext.P5 judgment this court directed the Vice Chancellor to pass appropriate orders after hearing the petitioner. Subsequently, he was given a personal hearing by the Vice Chancellor which resulted in Ext.P6 order reinstating him in service. The operative portion of the order reads as follows:

> "1. The post of Programme Co-ordinator in the School of Behavioural Sciences being placed under the teaching faculty of the school, and
>
> 2. Sri. D. Sreedharan being re-instated as Programme Co-ordinator in the School of Behavioural Science and permitted to continue in service until completion of 60 years of age."

The petitioner rejoined duty on 22.3.2004. Thereafter, Ext.P7 was communicated to him showing the scale of pay eligible for him. A reading of Ext.P7 shows that the petitioner has been sanctioned pay of Rs.9475/- in the scale of pay of Rs.7800 - 12975 which according to him, he was drawing at the time of his pre-mature retirement on 31.5.2000 but it is the scale of pay applicable to non-teaching staff. The petitioner thereafter submitted a further representation, Ext.P8 specifically seeking to grant him all service benefits including salary, etc. between the date of his pre-mature retirement and date of reinstatement, and to pay him the U.G.C. scale of pay applicable to a teaching post. Since delay occurred in the matter, he approached this court in Writ Petition No.25440/2004 which was disposed of by Ext.P9 judgment directing the Vice Chancellor to pass orders on Ext.P8 representation. Ext.P10 is the resultant order passed by the Vice Chancellor wherein it was ordered that the petitioner is to be granted only the benefit reckoning the period of break of service from 1.6.2000 to 22.3.2004 for the purpose of calculating his pensionary benefits. It was also

ordered that his request for U.G.C. scales as admissible to U.G.C. teachers, is not allowed. The petitioner contends that this order has been passed without considering the various aspects pointed out in Ext.P11 argument note submitted by him.

4. The respondents have filed a counter affidavit in the matter and the petitioner has filed a reply affidavit also.

5. In the counter affidavit filed on behalf of the University, the stand taken in paragraph 10 is that "as per the legal opinion dated 26.10.2004 received by the University, the post of Programme Co-ordinator has been placed under teaching faculty only from 22.3.2004 i.e. the date of orders and the reinstatement is only prospective and he will not get any benefits retrospectively." It is also contended in paragraph 13 that "the post is purely administrative one."

6. In the reply affidavit the petitioner has produced Exts.P14 and P15 which give more details regarding the functioning of the School of Behavioural Sciences and duties attached to the post of the Programme Co-ordinator.

7. Shri Babu Varghese, learned counsel for the petitioner contended that the University has reinstated the petitioner considering the fact that the post held by him is under the teaching faculty and accordingly he was

permitted to continue in service until the completion of 60 years of age. Therefore, it is contended that the pre-mature retirement effected on 31.5.2000 being illegal, he is entitled for all service benefits including arrears for the break in period from that date till the date of reinstatement. It is further contended that as the post is placed under the teaching faculty, he is entitled for a scale of pay as applicable to a teaching post and granted under the U.G.C. Scheme.

8. The facts reveal that the petitioner was reinstated in service as per Ext.P6 specifically considering the post of Programme Co-ordinator of the School of Behavioral Sciences as one belonging to teaching faculty. Thus, he was permitted to continue until the completion of 60 years. This act of the University clearly brings out the position that the post of Programme Co-ordinator belongs to the teaching faculty and hence the retirement age is 60. The contention raised in the counter affidavit in paragraph 10 that the post in question is placed under the teaching faculty only from the date of the order and hence he will not get any benefits retrospectively, cannot hold good in the light of the decision reflected in Ext.P6 itself. The said stand of the University is only fallacious. The post in question cannot have two characteristics; one before 23.2.2004 and another after that date. The fact that he was reinstated in service and was entitled to continue upto 60 years

shows that this is a post coming under the teaching faculty, as otherwise the respondents would not have allowed him to continue upto 60 years. It is not disputed that as far as teachers of the University are concerned, the age of retirement is 60. Therefore, the attempt made by the respondents in paragraph 10 of the counter affidavit to characterise the reinstatement as one having only a prospective effect as regards the nomenclature of the post, is without any legal basis. In paragraph 13 of the counter affidavit, the respondents have taken a contradictory stand which is not supported by any material at all. When the petitioner was appointed to the said post based on a selection process, it cannot be said that the University was unaware about the important functions to be discharged by the person holding the post in the concerned department. Ext.P15 is relevant in this context. It will show that the School of Behavioural Sciences have two units: (i) Academic Programmes; and (ii) Semi academic Community Programmes.

9. Some other aspects relating to the appointment are also relevant here. Chapter 3 of Mahatma Gandhi University Statutes 1997 relates to teachers of the University, procedure for their appointment, etc. Statute 4 (1)(b) concerns the formation of the Selection Committee for appointment of Reader, Lecturer, etc. The same Selection Committee has performed selection to the post held by the petitioner. This is not denied in the counter

affidavit. It is also relevant to note here that qualifications were prescribed by the Board of Studies which indicates that the post in question is a teaching post. It is also not disputed in the counter affidavit that as Programme Co-ordinator, the petitioner was given independent charge of the Special School, Clinic and Community Extension Programme under the School of Behavioural Sciences and he also imparted instructions in respect of the works. Ext.P13 is the Note prepared by the Registrar for consideration of the Syndicate at the time of considering the question of his reinstatement. Going by the above Note also, it is relevant to notice certain facts:- that the fact that qualifications have been prescribed by the Board of Studies, that selection was made by a Selection Committee for teachers, that the post of Co-ordinator in the School of Behavioural Sciences is comparable with that of DSS/Asst. Director, Adult Education and that he was given independent charge of Special School, Clinic and Community Extension Programmes under the School of Behavioural Sciences. It further shows that the post in question is concerned with academic duties. Further, the said point is no longer of any doubt in the light of the fact that in Ext.P6 it is specifically ordered that the post held by the petitioner is placed under the teaching faculty of the School of Behavioural Sciences and hence he is permitted to continue till the completion of 60 years. Hence, the contention

raised by the University that the post is only administrative in nature, falls to the ground in view of the specific stand taken by them itself in Ext.P6.

11. The petitioner has relied upon the decision of the Supreme Court in **P.S. Ramamohana Rao v. A.P. Agricultural University** ((1997) 8 SCC 350) in support of the argument that the post is one belonging to the teaching faculty. The question that came up for consideration in the above case was concerning the post of Physical Director in a University. The matter was examined considering the claim for continuance upto 60 years of age. After analysing the various aspects, the Honourable Supreme Court held that Physical Director comes within the definition of a 'teacher' under the relevant provisions of the A.P. Agricultural University Act. On an analysis of the various aspects emerging in this case also and going by the dictum laid down in that case, it cannot be disputed that the post held by the petitioner is one coming under the teaching faculty. The decision rendered by the Vice Chancellor as evidenced by Ext.P6, is binding on the University and hence the decision no longer can be said to be of any doubt at all.

12. Then the further question is whether the petitioner is entitled for the pay scale applicable to teachers as awarded by the U.G.C. and also whether he is entitled for the benefits during the break in period. Exts.P7 and P10 do not give any valid reasons to reject the pleas raised by the

petitioner in this regard. It is evident and clear from Ext.P10 that none of the relevant aspects have been considered. There is no case for the respondents that as far as the post of Programme Co-ordinator is concerned, a separate scale of pay was fixed at any time. But it is a case where the respondents were paying salary at a particular scale considering it only as an administrative post. When the respondents themselves have considered it as one under the teaching faculty as per Ext.P6, all the benefits attached to a teaching post automatically applies to it. The stand taken in Ext.P10 is not supported by any relevant orders in this regard issued by the University at any time. When the post is considered as one belonging to teaching faculty and he was reinstated in service after fixing the age of retirement at 60 years, they cannot deny him the allowable pay as applicable to teachers. It is declared so. Exts.P7 and P10 so far as they deny to him the scale of pay allowable under the U.G.C. Scheme for a teaching faculty, are unsustainable.

13. Further question is whether the petitioner is entitled for the arrears of pay during the break in period, i.e. from 1.6.2000 to 22.3.2004. The petitioner, obviously was given a pre-mature retirement by the respondents in violation of the age of retirement applicable to him. When the petitioner was entitled to continue upto 60 years going by Ext.P6, the

action taken by the University to compulsorily retire him at the age of 55 years was illegal and arbitrary. The petitioner was terminated from service in a most arbitrary and illegal manner. By Ext.P6, his entitlement to continue upto 60 years of age has been recognised by the respondents. No reasons have been stated in Exts.P7 or P10 for denying the arrears of salary for the period of break in service. The conditions of service governing him in the matter of age of retirement was interrupted arbitrarily and illegally, to his detriment. The subsequent conduct whereby it was restored to him itself, goes against them.

14. Counsel for the petitioner relied upon the various decisions of this court reported in **Narayana Menon v. State of Kerala (**1978 KLT 29), **Sivarajan v. State of Kerala** (1993 (2) KLT 287) and K**.K. Haridasan Nair v. K.S.E.B.** (ILR 2005 (4) Ker. 859) to contend for the position that when the right to hold the post is interfered with illegally and when such termination is bad in law, the party is entitled for restoration of his salary and other benefits. In 1978 KLT 29, it was held as follows:

> " No one can be penalised for no fault of his. Suppose a Government servant was reverted illegally or his services wrongly terminated and such reversion or termination is subsequently held to be wrong by a court of law and he is directed to be promoted or reinstated, could it be contended that such government servant is not entitled to be remuneration for the period during which he was

> under illegal reversion or illegal termination. the Government cannot take advantage of a mistake committed by them or an order passed by them in illegal exercise of their power. A Government servant cannot be said to have forfeited his claim for arrears of salary when he did not get his due promotion for no fault of his."

The above position was reiterated by a Division Bench in 1993 (2) KLT 287. A reading of the above decision shows that their Lordships have approved the dictum laid down in 1978 KLT 29. Their Lordships further noted that the statement of law contained in 1978 KLT 29 was approved by a Division Bench in 1984 KLT 141 and that these two decisions were followed subsequently in ILR 1991 (2) Ker. 98 and 1992 (1) KLT 3. Ultimately it was held that the petitioner in that case was entitled to the arrears of salary as the Government had denied him due promotion for no fault of his.

15. In the recent decision reported in ILR 2005 (4) Ker. 859 the Division Bench in similar circumstances held in the following terms:

> " When the right of one to hold a post has been interfered with illegally and contrary to the conditions of service and, when such termination is found bad in law, he shall have to be restored to his full position. Arbitrary and unilateral termination of service contrary to law when declared illegal shall result in payment of salary during the period one had been kept out of duty illegally. this is the normal rule. There should be strong reasons to depart from this rule at least in a case like this where the termination of service was per se illegal. Therefore the denial of back wages to the appellant is not justified."

The facts of the above case shows that it is also a case where the appellant

therein was entitled to continue upto 60 years of age. But his service was terminated on completion of 55 years of age by his employer, the Kerala State Electricity Board. This court found that he is entitled to continue in service until he attains 60 years of age and an order was passed directing reinstatement in service. In connection with the issue whether he is entitled for payment of back wages and also whether the employer had a discretion to deny salary, the Division Bench considered the legal principles governing the matter and held that once a termination is held as arbitrary and unreasonable, the party will be entitled for restoration to his full position. The facts of this case are also similar to that of the decision reported in ILR 2005(4)Ker. 859. It is well settled by various decisions of the Honourable Supreme Court that the normal rule when an order of termination is held illegal, that the employee will be entitled for reinstatement with back wages. There are exceptions to this rule also. One exception will be a case where an employee is proceeded with on certain charges of misconduct and he is given a lesser punishment than termination from service. In such cases, since the employee is at fault, he will not be entitled for full back wages normally. The other exception is a case where the employee is gainfully employed during the period while he was out of service. In this case, there is no case for the respondents that the petitioner was gainfully employed

during the period in question. Further, here the petitioner was never at fault and the termination was effected by the respondents illegally and arbitrarily. Therefore, the petitioner is entitled to be restored to his full position, as the termination is found bad in law.

16. In the light of the dictum laid down in the above decisions, I have no doubt in my mind that as the petitioner was compulsorily retired on 31.5.2000 on completion of 55 years of age for no fault of his and as the University itself realised the correct position regarding his age of retirement as per Ext.P6 proceedings, he cannot be denied the monetary benefits for the period from the date of compulsory retirement till the date of reinstatement. The action of the respondents in sending him out on 31.5.2000 was an illegal act which was contrary to the conditions of service. The respondents having treated him as one belonging to teaching faculty and permitted him to continue until completion of 60 years of age, they cannot deny him the benefits he would have drawn on the post for the period of break in service. In Ext.P10 no valid reasons have been stated also for holding that the period will be counted only for the purpose of calculating his pensionary benefits. This is a case where the petitioner has been moving the various authorities and this court at the appropriate time. He had to approach this court on different occasions for redressing his

grievances. After having treated him as one belonging to the teaching faculty and allowing him to continue upto 60 years, there is no justification to deny the monetary benefits which was due to him. Hence, Ext.P10 as far as the same restricts the grant of benefits only for the purpose of reckoning the period of break in service for calculating his pensionary benefits alone, is unsustainable. It is declared that the petitioner is entitled for arrears of salary and other monetary benefits for the period of break in service, i.e. from 1.6.2000 to 22.3.2004.

17. Writ Petition No.1973/2005 is one seeking to quash the steps taken by the Syndicate to cancel the reinstatement of the petitioner. It is agreed at the Bar during the arguments that in view of the interim order passed by this court which was extended from time to time, he continued in the post till his retirement. Therefore, no further orders are called for in the above writ petition except to hold that the continuance of the petitioner during the pendency of the writ petition till his date of retirement will be treated as valid and proper. Accordingly, the writ petitions are disposed of in the following terms:

Exts.P7 and P10 as far as it denies the benefits of scale of pay of teaching faculty under U.G.C. Scheme and the payment of monetary benefits during the break in period, are quashed. It is declared that the

petitioner is entitled for the scale of pay of teaching faculty and he is entitled to be paid arrears for the break in period along with other service benefits accordingly. Respondents are hereby directed to disburse the monetary benefits on that basis, within a period of four months from the date of receipt of a copy of this judgment. No costs.

(T.R. Ramachandran Nair, Judge.)

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